

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 520**

Introduced by Hadley, 37; Giese, 17; Wallman, 30.

Read first time January 21, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-2701 and 77-2715.07, Revised Statutes Cumulative  
3 Supplement, 2008; to allow an income tax credit for  
4 perpetual conservation easement donations as prescribed;  
5 to provide an operative date; to harmonize provisions;  
6 and to repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-2701, Revised Statutes Cumulative  
2 Supplement, 2008, is amended to read:

3           77-2701 Sections 77-2701 to 77-27,135.01 and 77-27,228 to  
4 77-27,236 and section 3 of this act shall be known and may be cited  
5 as the Nebraska Revenue Act of 1967.

6           Sec. 2. Section 77-2715.07, Revised Statutes Cumulative  
7 Supplement, 2008, is amended to read:

8           77-2715.07 (1) There shall be allowed to qualified  
9 resident individuals as a nonrefundable credit against the income  
10 tax imposed by the Nebraska Revenue Act of 1967:

11           (a) A credit equal to the federal credit allowed under  
12 section 22 of the Internal Revenue Code; and

13           (b) A credit for taxes paid to another state as provided  
14 in section 77-2730.

15           (2) There shall be allowed to qualified resident  
16 individuals against the income tax imposed by the Nebraska Revenue  
17 Act of 1967:

18           (a) For returns filed reporting federal adjusted  
19 gross incomes of greater than twenty-nine thousand dollars, a  
20 nonrefundable credit equal to twenty-five percent of the federal  
21 credit allowed under section 21 of the Internal Revenue Code of  
22 1986, as amended;

23           (b) For returns filed reporting federal adjusted gross  
24 income of twenty-nine thousand dollars or less, a refundable credit  
25 equal to a percentage of the federal credit allowable under section

1 21 of the Internal Revenue Code of 1986, as amended, whether or  
2 not the federal credit was limited by the federal tax liability.  
3 The percentage of the federal credit shall be one hundred percent  
4 for incomes not greater than twenty-two thousand dollars, and  
5 the percentage shall be reduced by ten percent for each one  
6 thousand dollars, or fraction thereof, by which the reported  
7 federal adjusted gross income exceeds twenty-two thousand dollars;

8 (c) A refundable credit for individuals who qualify for  
9 an income tax credit as an owner of agricultural assets under the  
10 Beginning Farmer Tax Credit Act for all taxable years beginning or  
11 deemed to begin on or after January 1, 2001, under the Internal  
12 Revenue Code of 1986, as amended; and a refundable credit as  
13 provided in section 77-5209.01 for individuals who qualify for an  
14 income tax credit as a qualified beginning farmer or livestock  
15 producer under the Beginning Farmer Tax Credit Act for all taxable  
16 years beginning or deemed to begin on or after January 1, 2006,  
17 under the Internal Revenue Code of 1986, as amended;

18 (d) A refundable credit for individuals who qualify for  
19 an income tax credit under the Nebraska Advantage Microenterprise  
20 Tax Credit Act or the Nebraska Advantage Research and Development  
21 Act; and

22 (e) A refundable credit equal to ten percent of the  
23 federal credit allowed under section 32 of the Internal Revenue  
24 Code of 1986, as amended.

25 (3) There shall be allowed to all individuals as a

1 nonrefundable credit against the income tax imposed by the Nebraska  
2 Revenue Act of 1967:

3 (a) A credit for personal exemptions allowed under  
4 section 77-2716.01;

5 (b) A credit for contributions to certified community  
6 betterment programs as provided in the Community Development  
7 Assistance Act. Each partner, each shareholder of an electing  
8 subchapter S corporation, each beneficiary of an estate or trust,  
9 or each member of a limited liability company shall report his or  
10 her share of the credit in the same manner and proportion as he  
11 or she reports the partnership, subchapter S corporation, estate,  
12 trust, or limited liability company income; and

13 (c) A credit for investment in a biodiesel facility as  
14 provided in section 77-27,236.

15 (4) There shall be allowed as a credit against the income  
16 tax imposed by the Nebraska Revenue Act of 1967:

17 (a) A credit to all resident estates and trusts for taxes  
18 paid to another state as provided in section 77-2730; and

19 (b) A credit to all estates and trusts for contributions  
20 to certified community betterment programs as provided in the  
21 Community Development Assistance Act.

22 (5)(a) For all taxable years beginning on or after  
23 January 1, 2007, and before January 1, 2009, under the Internal  
24 Revenue Code of 1986, as amended, there shall be allowed to each  
25 partner, shareholder, member, or beneficiary of a partnership,

1 subchapter S corporation, limited liability company, or estate or  
2 trust a nonrefundable credit against the income tax imposed by  
3 the Nebraska Revenue Act of 1967 equal to fifty percent of the  
4 partner's, shareholder's, member's, or beneficiary's portion of the  
5 amount of franchise tax paid to the state under sections 77-3801 to  
6 77-3807 by a financial institution.

7 (b) For all taxable years beginning on or after January  
8 1, 2009, under the Internal Revenue Code of 1986, as amended,  
9 there shall be allowed to each partner, shareholder, member, or  
10 beneficiary of a partnership, subchapter S corporation, limited  
11 liability company, or estate or trust a nonrefundable credit  
12 against the income tax imposed by the Nebraska Revenue Act of 1967  
13 equal to the partner's, shareholder's, member's, or beneficiary's  
14 portion of the amount of franchise tax paid to the state under  
15 sections 77-3801 to 77-3807 by a financial institution.

16 (c) Each partner, shareholder, member, or beneficiary  
17 shall report his or her share of the credit in the same manner  
18 and proportion as he or she reports the partnership, subchapter S  
19 corporation, limited liability company, or estate or trust income.  
20 If any partner, shareholder, member, or beneficiary cannot fully  
21 utilize the credit for that year, the credit may not be carried  
22 forward or back.

23 (6) There shall be allowed as a refundable credit against  
24 the income tax imposed by the Nebraska Revenue Act of 1967 a credit  
25 as provided in section 3 of this act.

1           Sec. 3. (1) There shall be allowed a refundable credit  
2 against the income tax imposed by the Nebraska Revenue Act of  
3 1967 to a taxpayer who donates during the taxable year or the  
4 preceding taxable year all or part of the value of a perpetual  
5 conservation easement upon real property the taxpayer owns to the  
6 state, to a political subdivision of the state, or to a charitable  
7 organization that meets the requirements of 26 U.S.C. 170(h).  
8 A charitable organization that proposes to hold a conservation  
9 easement shall name in the easement a cooperating agency or  
10 organization that will automatically accept the easement should the  
11 charitable organization cease to exist. The amount of the credit  
12 shall not include the value of any portion of an easement on real  
13 property located in another state.

14           (2) To qualify for the income tax credit:

15           (a) The taxpayer shall file an application with the  
16 Department of Agriculture no later than August 1 of the tax year  
17 for which the initial tax credit is sought. The application shall  
18 include (i) an appraisal by a certified general real property  
19 appraiser utilizing the Uniform Appraisal Standards for Federal  
20 Land Acquisition and (ii) the amount of tax credit requested.  
21 The department shall review the application and may approve  
22 applications for that year for conservation easements.

23           (b) The taxpayer shall file with the Department of  
24 Revenue, at the same time as the taxpayer files a return for the  
25 taxable year in which the income tax credit is claimed, a certified

1 copy of the approved application with the value of the conservation  
2 easement as approved by the Department of Agriculture;

3 (c) The conservation easement shall be in perpetuity;

4 (d) The perpetual conservation easement shall be filed  
5 with the office of the register of deeds of each county in which  
6 real property subject to the easement is located;

7 (e) The holder of the perpetual conservation easement  
8 shall have a monitoring program to ensure that the terms of the  
9 easement are followed. If the holder is a charitable organization  
10 that has designated a governmental agency as a successor holder,  
11 annual monitoring reports shall be provided to that agency; and

12 (f) The easement shall meet the requirements of 26 U.S.C.  
13 170(h) for the purposes of preserving natural areas, agricultural  
14 land, open space, wildlife habitat, watersheds, forest land, view  
15 sheds, cultural sites, and historic areas.

16 (3) The Department of Agriculture shall review  
17 applications for any year and approve qualifying conservation  
18 easements by November 1. The department shall not approve  
19 applications for tax credits which would total more than five  
20 million dollars for any one year. If qualified applications would  
21 result in tax credits totaling more than five million dollars in  
22 the year, including qualifying carryover credits from previous  
23 years, the department shall prioritize qualifying applications.  
24 The Department of Agriculture shall establish a committee to  
25 establish criteria to evaluate and prioritize applications. The

1 committee shall include representatives of the Nebraska Game  
2 and Parks Commission, Nebraska State Historical Society, the  
3 Nebraska Association of Resource Districts, the Department of  
4 Natural Resources, one charitable organization that meets the  
5 requirements of 26 U.S.C. 170(h)(3)(A) or (B), and one organization  
6 representing agricultural producers. The committee shall develop  
7 criteria to evaluate and rank submitted applications. The criteria  
8 shall include preserving natural areas, agricultural land, open  
9 space, wildlife habitat, watersheds, forest land, view sheds,  
10 cultural sites, historic areas, water quality, water quantity,  
11 flood protection, ecotourism opportunities, and public access  
12 opportunities.

13 (4) Upon approval, the department shall send to the  
14 applicant a certified copy of the approved application with the  
15 approved value of the tax credit, including the value of credits  
16 allowed in subsequent years.

17 (5) The income tax credit shall be an amount equal to  
18 fifteen percent of the appraised value of the donated portion  
19 of the perpetual conservation easement, not to exceed fifty  
20 thousand dollars per tax year or a total of two hundred fifty  
21 thousand dollars over five years. In the case of a partnership,  
22 subchapter S corporation, or other similar pass-through entity  
23 that donates a perpetual conservation easement as an entity, the  
24 two-hundred-fifty-thousand-dollar limitation shall be calculated at  
25 the entity level and the credit shall be allocated to the entity's

1 partners, members, or shareholders in proportion to the partners',  
2 members', or shareholders' distributive shares of income from the  
3 entity.

4 (6) A taxpayer may claim the income tax credit under this  
5 section on only one conservation easement per taxable year.

6 (7) On or before January 1, 2010, and each January 1  
7 thereafter, the Department of Agriculture shall issue a report  
8 to the Legislature and Governor detailing the use of income tax  
9 credits under this section. A portion of the report shall show  
10 perpetual conservation easements and income tax credits, the number  
11 of acres protected, the conservation values that were preserved,  
12 and the public benefits that resulted from these easements. The  
13 Department of Revenue shall assist the Department of Agriculture  
14 with this portion of the report. The report shall be presented  
15 using aggregated information and other techniques so as not to  
16 reveal confidential information that allows identification of  
17 any taxpayer. The report shall not be issued until the Tax  
18 Commissioner has confirmed in writing that the report does not  
19 reveal any confidential information that allows identification of  
20 any taxpayer.

21 Sec. 4. This act becomes operative for all taxable years  
22 beginning or deemed to begin on or after January 1, 2009, under the  
23 Internal Revenue Code of 1986, as amended.

24 Sec. 5. Original sections 77-2701 and 77-2715.07, Revised  
25 Statutes Cumulative Supplement, 2008, are repealed.